

U.S. Department of Labor

Office of Administrative Law Judges
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DATE ISSUED: February 25, 1999

Case No: 1999-CLA-8

In the Matter of

ADMINISTRATOR, WAGE AND HOUR DIVISION
U.S. DEPARTMENT OF LABOR,

Plaintiff

v.

R. G. APPLGATE STEEL CO., INC.
d/b/a APPLGATE FARM EQUIPMENT,

Respondent

BEFORE: RUDOLF L. JANSEN
Administrative Law Judge

DECISION AND ORDER APPROVING CONSENT FINDINGS

This proceeding arises under Section 16(e) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. § 216(e)), and the regulations issued thereunder which are found at 29 C.F.R. Parts 579 and 580. A civil money penalty in the amount of \$8,500.00 was assessed against Respondent as a result of employment of one minor in violation of the child labor provisions of Section 12 of the Act (29 U.S.C. § 212). A timely exception to the assessed civil money penalty was filed by the Respondent causing the matter to be referred to this office for hearing.

The Respondent has now agreed to the penalty asserted and has tendered full payment of \$8,500.00 to the Plaintiff. Respondent has also withdrawn its exception to the assessment of the penalty and has agreed to accept the penalty as final and binding.

On December 21, 1998, the parties filed Consent Findings which were signed by both parties and a request was made that an order be issued disposing of this case by way of application of 29 C.F.R. § 18.9 of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges. In response, I issued an Order on December 22, 1998 requiring the Plaintiff to advise me as to the basis for applying 29 C.F.R. §

18.9 to the final disposition of this case since no request for deferral or ALJ supervision of settlement negotiations had taken place. Absent a deferral or supervised settlement negotiations, the Administrative Review Board has concluded that our Rules of Practice and Procedure and specifically Section 18.9 do not apply. Indiana Department of Workforce Development v. U.S. Dep't. of Labor, 97-JTP-15, Final Order Dismissing Complaint, (ARB Dec. 8, 1998).

In response to my Order, the Plaintiff has filed a Motion to Dismiss Order of Reference pursuant to authority conferred by Rule 41(a)(2) of the Federal Rules of Civil Procedure. Plaintiff suggests that the provisions of 29 C.F.R. § 18.9 are inapplicable to the disposition of this case and that therefore the Federal Rules of Civil Procedure will control.

Program regulations outline the procedure for assessing and contesting civil money penalties under the Fair Labor Standards Act. 29 C.F.R. Part 580. Section 580.7(a) contains a specific directive for the use of the Department's procedural rules. That section reads as follows:

Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges established by the Secretary at 29 CFR Part 18 shall apply to administrative proceedings under this subpart.

There exists no specific exclusion for use of our rules nor do the Part 18 Rules conflict with any provisions of Part 580 and therefore this regulation compels the use of the Part 18 procedural rules in disposing of this case. That procedure has been followed in many Fair Labor Standard Act penalty cases for a long period of time and I choose to continue its usage here notwithstanding the decision of the Administrative Review Board noted above.

Upon review of the record, the Consent Findings are approved. The agreement constitutes full and final resolution of this matter. IT IS ORDERED that:

1. This order shall have the same force and effect as an order made after a full hearing;
2. The entire record upon which this Order is based shall consist solely of the Order of Reference and the Consent Findings;
3. Any further procedural steps before the Office of Administrative Law Judges are hereby waived; and,
4. All rights to challenge or contest the validity of this Order which has been entered into in accordance with the Consent Findings are hereby waived.

IT IS FURTHER ORDERED that this matter is hereby dismissed. This Decision

constitutes the Final Order of the Secretary unless an appeal is taken. 29 C.F.R. § 580.12(e).

RUDOLF L. JANSEN
Administrative Law Judge

NOTICE OF APPEAL RIGHTS. Pursuant to 29 C.F.R. § 580.13, any party dissatisfied with this Decision and order may appeal it to the Administrative Review Board within 30 days of the date of this decision, by filing a notice of appeal with the Administrative Review Board, U.S. Department of Labor, Room S-4309, Frances Perkins Building, 200-Constitution Avenue, N.W., Washington, D.C. 20210. The Administrative Review Board has been delegated authority and assigned responsibility by the Secretary to issue final decisions in Fair Labor Standards Act cases. 61 Fed. Reg. 19978 (1996). A copy of the notice of appeal must be served on all parties to this Decision and order and on the Chief Administrative Law Judge, U.S. Department of Labor, 800 K Street, N.W., Suite 400, Washington, D.C. 20001-8002. If no timely appeal is filed, this Decision and order shall be deemed the final agency action.